* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 2261/2005

PROMOD KUMAR ..... Petitioner
Through Mr.Y.D.Nagar, Advocate

versus

UOI & ORS. ..... Respondent
Through Ms.Barkha Babbar, Advocate

Date of Decision: October 30, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L.BHAYANA

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J. (ORAL)

1. In this Writ Petition it has been prayed for the quashing of the Order dated 30.6.2004 of the Bureau of Sailors, Mumbai, authored by the Staff Officer (Pension). The disability suffered by the Petitioner during his service in the Navy had been rejected on the ground that it had not been sustained while on duty. The Petitioner also prays that a writ of mandamus be issued directing the Respondents to release disability pension to the Petitioner with effect from 1.6.2004 together with interest at the rate of 18 per cent per annum.

2. We may also note that the impugned Order dated 30.6.2004 informed the Petitioner that an Appeal should be preferred against it within six months. No Appeal has been filed and it is for this reason that a threshold Objection has been taken against the maintainability of the writ petition.

3. The Petitioner joined the Indian Navy on 5.5.1989 as an MER. Promotion was declined to him as he had been placed on low medical category owing to a 'displaced fracture of medial hallocolus (RT) Foot" vide an Injury Report dated 12.2.1998. The Writ Petition itself recites that the petitioner had suffered this injury as a consequence of the skidding of his motorcycle to save a cycle and due to break fail. Paragraph 3 of the Petition narrates that a Court of Inquiry was not held and that the Medical Officer had opined that - "the injury occurred in peace area and is not attributable to military service". This view was concurred with by the OC Unit. Annexure P1 is the "Report on Accidental and Self Inflicted Injuries – Officers". It contains a declaration of the Petitioner that the injury sustained by him on 1.2.1998 did not occur while he was in the performance of military duty; that it did not constitute an offence triable under the disciplinary code applicable to him; that the accident did not

occur during his journey or transport from his quarters to or back from an appointed place of duty. This Report is dated 12.2.1998 and is, therefore, a contemporaneous document. It is trite that admissions in pleadings are most conclusive on any aspect of a controversy.

4. Annexure P-2, dated 24.2.2004, is the "Role of PBOR proposed to be invalided" and bears the recommendation of the Competent Authority. It will be relevant to record that the columns dealing with invaliding/disability pension have been left blank by the Petitioner. We record so for the reason that an unsubstantiated claim had been made before us by learned counsel for the Petitioner that the OC Unit had made a favourable recommendation for entitlement to invalidment pension.

5. Annexure R-1 is the Release Medical Board proceedings as is obvious from the scoring out of the word "invalidment". It bears the signatures of the Petitioner and notes that the Petitioner is "fit for release in medical category S3A2 (P) PMT". The Medical Officer has made the endorsement that the disability is neither attributable to nor aggravated by his

service. While the disability has been assessed at 20 per cent, it has been again mentioned in paragraph 8 thereof that it is a “release” (in contradistinction to an “invalidment” which has been scored out) in medical category. The distinction between these terms should not be lost sight of. Where any personnel seeks to be released from service because of loss of promotional prospects he cannot simultaneously claim Disability Pension. Where any personnel is discharged by any of the Armed Forces because of his disability/injury, such pension would be admissible if the criteria is met.

6. Our attention has been drawn by learned counsel for the Petitioner to Appendix-V pertaining to Regulations 43, 101 and 109 concerning nature, assessment and attributability of disability and entitlement to disability pension. Rule 2, on which reliance has been placed by learned counsel for the Petitioner, militates against the Petitioner's claim inasmuch as it stipulates that invalidment from service is a necessary condition for the grant of disability pension, since it also contemplates disability of sailors because no alternative or suitable employment can be provided. We had enquired from learned counsel for the parties whether the Petitioner had been discharged on this ground.

Learned counsel for the Respondent has stated that the discharge was pursuant to the Petitioner's request, whereas learned counsel for the Petitioner has contended that he was invalided out of service.

7. Learned counsel for the Petitioner has also placed reliance on the Navy (Pension) Regulations, 1964 (for short Regulations) which speak in harmony with Rule 2 of Appendix-V to which we have already adverted above. Learned counsel for the Petitioner has also drawn our attention to Regulation 105-B of the Regulations which unfortunately for the Petitioner has no application in his case for the simple reason that apart from the service pension admissible to him, a disability element on account of his disability has not been sanctioned. As has been noted this was for the reason that the disability was neither attributable to nor aggravated by service.

8. We are also unable to appreciate any manner by which the decision in Ex. Naik Bijender Singh -vs- Union of India dated 19.10.2006 is of any avail or succor to the Petitioner. The Petitioner has himself acknowledged that the injury sustained by him was not attributable to service. Mr. Nagar also refers us

to two decisions of the Division Bench delivered on the same day, that is, 19.10.2006 (Jitendra Kumar -vs- Chief of Army Staff and Hav.Rohtas -vs- Union of India). Predictably these Judgments contain the same dialectic and conclusions, inter alia, that if the injury causes over 20 per cent disability and it is attributable to or aggravated by military service, Disability Pension may become payable.

9. CDA (Pension) is not competent to give a decision different to that of the Invalidating Board. We reiterate that in the present case there is no recommendation for the grant of invalidment pension in favour of the Petitioner for the reason that he has not been invalidated out of service due to his disability and injury, on the Petitioner's own pleadings/admission, is neither attributable to nor aggravated by military service.

10. Petition is devoid of merit and is dismissed.

(VIKRAMAJIT SEN)
JUDGE

(S.L.BHAYANA)

OCTOBER 30, 2007 JUDGE
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